

Part K – Reform the Empire Zones Program

Purpose:

The purpose of this bill is **to amend the Tax Law and the General Municipal Law to enact reforms to the Empire Zones program.**

Statement in Support, Summary of Provisions, Existing Law and Prior Legislative History:

This bill authorizes numerous program reforms and administrative changes to the Empire Zones Program in order to achieve substantial cost savings and improve the program's strategic focus by more narrowly targeting benefits to firms creating jobs and making capital investment in the State.

Sections one through 13 amend Article 18-B of the General Municipal Law to improve administrative efficiency, increase accountability, and reduce costs of the tax benefits for the Empire Zones Program.

Specifically, §§1 through 13 of the bill establish the following reforms.

- Expands the bases for decertification to include: i) making any misrepresentation of material fact on a business annual report; (ii) failure to invest in a facility substantially in accordance with representation made by the business enterprise in its applications; and (iii) failure to meet the requirements of the cost-benefit analysis provided, however, that the Commissioner of the Department of Economic Development (DED) may consider, in his or her sole discretion, other economic, social and environmental factors when evaluating the costs and benefits of a project to the state and whether continued certification is warranted based on these factors.
- Requires business enterprises to be recertified by the Commissioner of DED by meeting or exceeding a 20:1 ratio of the actual value of wages, benefits and capital investments paid by a business enterprise for at least a three-year period at the location(s) approved by the Commissioner, versus the amount of state tax benefits actually claimed and used by the business enterprise for that time period at those location(s). Business enterprises certified prior to April 1, 2005 will be reviewed in 2009. If they are decertified, they will lose their EZ benefits for 2008 and thereafter. Business enterprises reviewed and decertified thereafter will lose their benefits starting in the year in which they are decertified.
- For new business applicants seeking certification on or after April 1, 2009, the bill requires a 20:1 ratio of estimated value of wages, benefits and capital investments to be paid by a business enterprise versus the estimated value of state tax benefits that may be claimed by that business enterprise, for first three years of certification at locations approved by the Commissioner of DED.
- Limits new certifications beginning April 1, 2009 to firms that are manufacturing enterprises (including high-tech, bio-tech, clean-tech, and agri-business), financial service enterprises, or extraordinary projects. The Commissioner of DED will be the sole certification officer, and will be responsible for promulgating regulations: (a) defining high-tech, bio-tech, clean-tech, financial services, manufacturing, agri-business enterprises, and extraordinary projects, (b) governing criteria for certification (including meeting the requirements of the cost-benefit analysis), and (c) establishing the application process for certification.
- Removes the “economic circumstance or unforeseen conditions” exception to the failure to create new employment or prevent loss of employment grounds for decertification.

- Terminates the authority to designate new Empire Zones and to increase the area of existing zones for applications filed after to April 1, 2009.
- Changes the deadline date for submission to the Governor and the Legislature of an independent report evaluating the Empire Zones program from December 31, 2009 to August 31, 2010.

Sections 14 through 24 of the bill would amend the Tax Law to eliminate carryover credits for taxpayers that are decertified for failure to meet the 20:1 cost benefit analysis under Article 18-B of the General Municipal Law. Sections 26 through 31 would suspend the running of interest on refunds and the accrual of underpayment related penalties for the 2008 tax year during the pendency of the cost benefit analysis in 2009 for those taxpayers subject to review during that time.

Sections 32 through 43 would repeal the QEZE sales and use tax exemptions and replace them with a QEZE credit or refund containing similar provisions. This change to a credit or refund would allow the Department of Taxation and Finance to track the amount and usage of the QEZE sales and use tax benefits, which currently is not possible with the exemption. In addition, the separate requirement that companies receive a QEZE certification from the Department of Taxation and Finance in order to access the sales tax benefits would be repealed because it would no longer be necessary. The remaining sections would amend the various statutes that currently authorize counties, cities, and school districts to piggyback on the state QEZE sales and use tax exemption to conform to the new refund or credit scheme.

Section 44 would repeal the existing requirement that the Tax Department prepare an annual summary report on Empire Zones tax benefits claimed by certified businesses. This report would be replaced by the public report required by the amendments in bill § 45. This public report would be prepared by Tax Department and would provide the name of each taxpayer that claims an Empire Zones tax benefit and would specify the amount of Empire Zones tax benefits used by or refunded to each taxpayer.

Budget Implications:

This bill will increase tax receipts reflected in the State Financial Plan by an estimated \$272 million in SFY 2009-10 and by \$292 million in SFY 2010-11. Thus, enactment of this bill is necessary to implement the 2009-10 Executive Budget.

Effective Date:

This bill would take effect immediately, provided that §§14 through 25 of this bill shall apply to taxable years beginning on or after April 1, 2009, §§32 and 33 and §§36 through 42 shall take effect on the first day of the sales tax quarter next commencing at least 60 days after this bill becomes a law; provided that any refund or credit allowed pursuant to the amendments made by §33 may not be paid for that quarter for at least two hundred seventy days after this bill becomes a law; and provided that § 35 of this bill shall take effect April 1, 2009.